IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.6617 of 2007
Date of Decision : May 04, 2007.

Naresh Kumar .... Petitioner

Vs.

State of Punjab and others .... Respondents

CORAM : HON'BLE MR.JUSTICE J.S.KHEHAR
HON'BLE MR.JUSTICE L.N.MITTAL

* * *

Present : Mr.Puneet Bali, Advocate
for the petitioner.

* * *

J.S.KHEHAR, J. (Oral) :

It is not a matter of dispute that the petitioner is a substantive employee of the Social Security, Women and Child Development Department, Punjab where he holds the post of Child Development and Project Officer. By an order dated 29.10.2004, the petitioner was taken on deputation against the post of Block Development and Panchayat Officer in the department of Rural Development and Panchayats, Punjab. The period of the petitioner's deputation was extended for another period of one year from 1.12.2005 to 30.11.2006. Yet again, by an order dated 4.12.2006, the period of the petitioner's deputation was extended from 1.11.2006 to 30.11.2007.

According to the learned counsel for the petitioner, the petitioner has an indefeasible right to continue in the Rural Development and Panchayats Department, till 30.11.2007, in terms of the order dated 4.12.2006 (Annexure P-4). Despite the aforesaid order, the borrowing department, namely, the Rural Development and Panchayats Department has passed an order dated 12.4.2007, repatriating the petitioner to his parent department, namely the department of Social Security, Women and Child Development, Punjab. It is this matter which is subject matter of challenge at the hands of the petitioner.

A perusal of the impugned order reveals that the petitioner was being reverted back to his parent department on account of the fact that the posts of Block Development and Panchayat Officers, in the Rural Development and Panchayats Department, are to be filled up, either by way of promotion or direct recruitment. In this behalf, learned counsel for the petitioner has invited our attention to Rule 6 of the Punjab Rural Development and Panchayats (Group`A') Non-Technical Services Rules, 2002 (hereinafter referred to as 2002 Rules). Rule 6 of 2002 Rules, which is relevant to the present controversy is being extracted hereunder :-

> ***"6.*** *Method of appointment and qualification -*
>
> *(1) Appointment to the service shall be made in the manner specified in Appendix `B'.*
>
> *Provided that if, no suitable candidate is available for appointment by promotion and by direct appointment, then appointment to the Service shall be made by transfer of a person holding a similar or an identical post under a State Government or Government of India.*
>
> *(2) No person shall be appointed to the Service, unless he possesses the qualifications and experience specified against that post in appendix*

`B'.

(3) Appointment to the Service by promotion shall be made on seniority-cum-merit basis, but no person shall have any right to claim promotion on the basis of seniority alone.

x x x x x

APPENDIX `B'

(See Rule 5)

Sr. No.	***Designation of the posts***	***Percentage for appointment by***		***Method, experience and qualification for appointment by***	
		Promotion	***Direct appointment***	***Promotion***	***Direct appointment***
1	2	3	4	5	6
xx	xxx	xxx	xxx	xxx	xxx
7	Block Development and Panchayat Officer/ Education and Panchayat Officer	Fifty per cent	Fifty per cent	Out of the Promotion quota, -- **(i)** 72 per cent posts will be filled up from amongst the Social Education and Panchayats Officers, working under the control of the Director, who have an experience of working as such for a minimum period of seven years;	**(i)** Should be Graduate from a recognised University or institution ; **(ii)** Should have passed Matriculation examination or its equivalent with Punjabi as one of the subjects from a recognised University or Institution; and

Sr. No.	*Designation of the posts*	*Percentage for appointment by*		*Method, experience and qualification for appointment by*	
				(ii) 20 per cent posts will be filled up from amongst the Senior Assistants (Accounts), working under the Control of the Director, who have an experience of working as such for a minimum period of ten years; and	**(iii)** Should qualify a test to be conducted by the Commission as per syllabus specified by the Government from time to time
				(iii) 8 per cent posts will be filled up from amongst the Cattle Fair Officers, working under the control of the Director, who have an experience of working as such for a minimum period of seven years.**"**	

A perusal of Rule 6, coupled with Appendix `B', extracted herein above, reveals that the posts of Block Development and Panchayat Officers have to be filled up in specified quotas, by way of direct recruitment or by way of promotion. The proviso to Rule 6 (1), however,

envisages that in case, a candidate is not available for appointment, either by way of promotion or direct recruitment, it would be open to the appointing authority, to make appointments against the post of Block Development of Panchayat Officers, by way of transfer of a person holding a similar post in the State Government. It is, therefore, apparent from the statutory rules, referred to herein above, that the question of appointment by way of transfer (or for that matter, by way of deputation), would arise only, when it is not possible to fill up the posts of the Block Development and Panchayat Officers, in terms of the statutory rules, either by way of promotion or by way of direct recruitment. It is not the case of the petitioner before us that such efforts were made, but the respondents could not fill up the vacancies in the cadre of Block Development and Panchayat Officers, from the sources of recruitment, referred in the 2002 Rules. In the aforesaid circumstances, we are satisfied that the induction of the petitioner, into the office of the Rural Development and Panchayats Department, by way of deputation, was not in consonance with the provisions of 2002 Rules. It is for this very reason that the petitioner is being sought to be reverted back to his parent department by an order dated 12.4.2007.

In order to repudiate the reason, depicted in the impugned order, for reverting the petitioner back to his parent department, learned counsel for the petitioner has placed vehement reliance on the decision rendered by the Apex Court in ***Rameshwar Prasad vs. Managing Director, U.P.Rajkiya Nirman Nigam Limited and others,*** reported as ***(1999) 8 SCC 381***. From the aforesaid judgment learned counsel for the petitioner has placed reliance on the following observations recorded therein :-

> ***"14.*** *We agree with the learned counsel for Respondent 1 and make it clear that an employee who is on deputation has no right to be absorbed in the service where he is working on deputation. However, in some cases it may depend upon*

statutory rules to the contrary. If the rules provide for absorption of employees on deputation then such employee has a right to be considered for absorption in accordance with the said rules. As quoted above, Rule 16(3) of the recruitment rules of the Nigam and Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984 provide for absorption of employees who are on deputation.

15. *In the present case, considering the facts, it is apparent that inaction of Respondent 1 of not passing the order either for repatriation or absorption qua the appellant was unjustified and arbitrary. On the basis of Rule 16 of the recruitment rules, the appellant was appointed on deputation in May 1985. He was relieved from his parent department on 18-11-1985 and joined the Nigam on 19-11-1985. Under Rule 5 of the U.P. Absorption of Government Servants in Public Undertakings Rules, 1984, he was required to file an application for his absorption in employment of the Nigam. Thereafter on the basis of letter dated 22-12-1987 written by the GM (HQ) and the letter dated 30-12-1987 written by the GM (NEZ), he opted for continuation and absorption in the service of the Nigam by letter dated 31-12-1987.....***"**

It is not possible for us to find favour with the claim raised by the petitioner on the basis of the observations referred to by the learned counsel, during the course of arguments. In fact, it has categorically been

asserted in the aforesaid observations, that the statutory rules will govern the rights of the employee, to continue on deputation, or to be absorbed in the borrowing department. Since the impugned order has been passed on the basis of statutory rules, which we have narrated herein above, we are of the view that the impugned order dated 12.4.2007 calls for no interference, especially when the initial appointment of the petitioner, by way of deputation, was in clear violation of the statutory rules.

Learned counsel for the petitioner has also placed reliance on the decision rendered by Hon'ble Supreme Court in ***Union of India vs. V.Ramakrishnan – (2005) 8 SCC 394*** and on the following observations recorded therein :-

> ***"32.*** *Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as, for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be questioned when the same is mala fide. An action taken in a post-haste manner also indicates malice. (See Bahadursinh*

Lakhubhai Gohil v. Jagdishbhai M. Kamalia SCC para 25.)

33. *Kunal Nanda v. Union of India relied upon by the learned Solicitor General, was a case where the petitioner therein had asserted a claim for permanent absorption in the department.*

34. *The matter relating to appointment through the Government of Pondicherry Public Works Department Group `A' Post of Chief Engineer Recruitment Rules, 1996 was governed in terms of a notification dated 11-12-1996. The said notification was issued by the Government of Pondicherry in exercise of its power under the proviso to Article 309 of the Constitution. Rule 3 thereof prescribes that the method of recruitment thereto shall be as specified in columns 5 to 14 of the Schedule appended thereto. In terms of the Schedule, the post of Chief Engineer was a selection post and one of the methods for recruitment as envisaged in column 11 thereof is that the same post may be filled up by direct recruitment or by promotion or by deputation/transfer. The said post could be filled up by transfer on deputation in terms of column 12 of the Schedule appended thereto. The appointment of the first respondent to the said post was on short-term deputation/temporary basis till a regular appointment is made.*

35. *In Parshotam Lal Dhingra, it is*

categorically stated that when an appointment is made for a specific period, unless any disciplinary proceeding is initiated, a person will be entitled to hold the said post."

In view of our having concluded herein above that the initial appointment of the petitioner, by way of deputation, was in clear violation of the statutory rules, we are of the view that the observations recorded by the Apex Court in V.Ramakrishnan's case (supra) are clearly inapplicable to the present one.

In view of the above, we find no merit in the instant writ petition and the same is accordingly dismissed.

(J.S.KHEHAR)
JUDGE

May 04, 2007
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(L.N.MITTAL)
JUDGE